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Before the

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of)
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Ameritech Corporation Telephone)
Operating Companies' Continuing)
Property Records Audit)
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Bell Atlantic (North) Telephone)
Companies' Continuing Property Records)
Audit)
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Bell Atlantic (South) Telephone)
Companies' Continuing Property Records)
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BellSouth Telecommunications')
Continuing Property Records Audit)
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Pacific Bell and Nevada Bell)
Telephone Companies' Continuing)
Property Records Audit)
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Southwestern Bell Telephone)
Company's Continuing Property)
Records Audit)
)
U S WEST Telephone Companies')
Continuing Property Records Audit)

CC Docket No. 99-117

ASD File No. 99-22

FOIA Request Control No. 99-163

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AUG 3 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**APPLICATION FOR REVIEW
AND REVIEW OF FREEDOM OF INFORMATION ACTION**

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August 3, 1999

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SUMMARY

U S WEST and other RBOCs submitted information to the Common Carrier Bureau as part of an audit of the RBOCs' central office equipment. U S WEST submitted that information in reliance on the Commission's longstanding policy of preserving such information in confidence — a policy that is explicitly set out in the Commission's rules. *See* 47 C.F.R. § 0.457(d)(1)(iii). Rather than preserving that information in confidence, the Bureau has decided to release it pursuant to a protective order in response to a Freedom of Information Act request. This decision is unlawful. It is contrary to the Trade Secrets Act, which prohibits disclosures of this type of information unless specifically "authorized by law," 18 U.S.C. § 1905; the Communications Act, which generally prohibits such disclosure, *see* 47 U.S.C. § 220(f); and the Freedom of Information Act, which does not countenance disclosures pursuant to protective orders. The decision is also contrary to the Commission's own precedent regarding treatment of audit information. Furthermore, the decision was taken without the safeguards required by the Commission's own rules: the Bureau came to this decision without even conducting the analysis that the Commission's rules mandate before any disclosure may occur. Had the Commission performed this review, it would have concluded that disclosure was not warranted.

Reversal of the Bureau's decision is in the interests of the Commission, U S WEST, and other parties who have submitted or may in the future submit confidential information to the Commission during the course of audit proceedings. The Commission should reverse the decision to preserve the candor and cooperation of such parties during the Commission's audits. The Commission should also reverse the decision because disclosure would cause competitive harm to U S WEST. Allowing this decision to stand would have a

substantial chilling effect on the Commission's ability to perform such audits in the future. The RBOCs' candor and willingness to share this type of sensitive information with the Commission was premised on an understanding and expectation that the information would be kept in confidence. The Bureau's decision, if allowed to stand, would unlawfully and unfairly breach that understanding and upset that expectation.

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**APPLICATION FOR REVIEW
AND REVIEW OF FREEDOM OF INFORMATION ACTION**

Pursuant to 47 C.F.R. § 0.459(g), § 0.461(i), and § 1.115(a), U S WEST
Communications Inc. respectfully asks the Commission to review and vacate the decision of the
Common Carrier Bureau reflected in its letter of July 27, 1999 in the above-captioned proceeding

(the "Bureau Decision").^{1/} The Bureau unlawfully decided to release information that U S WEST submitted in reliance on an understanding and expectation — backed up by many years of Commission precedent — that the information would be maintained in strict confidence. The application presents the following questions:

1. Did the Bureau violate 18 U.S.C. § 1905, 47 U.S.C. § 220(f), 47 C.F.R. § 0.457, and Commission precedent when it decided to release audit-related information that U S WEST submitted in confidence pursuant to 47 C.F.R. § 0.457(d)(1)(iii)?
2. Did the Bureau violate the foregoing authorities and the Freedom of Information Act when it decided to release audit-related information pursuant to a protective order?

Pursuant to 47 C.F.R. § 1.115(b)(2)(i) and (v), U S WEST states that it seeks review of the Bureau Decision on the grounds that it (1) is in conflict with statute, regulation, case precedent, and established Commission policy; and (2) constitutes prejudicial procedural error.

U S WEST asks the Commission to vacate the Bureau Decision and declare that the information that U S WEST voluntarily submitted to the Bureau for its central office equipment audit must not be released under a protective order or otherwise. In the alternative, U S WEST asks the Commission to vacate the Bureau Decision and remand the matter with instructions for the Bureau to conduct the analysis required by 47 C.F.R. § 0.457. In the event

^{1/} The Common Carrier Bureau instructed U S WEST to respond to its decision under 47 C.F.R. § 0.459(g), which allows five working days in which to file an application for review. U S WEST believes that its right to review of the Bureau's decision lies in 47 C.F.R. § 0.461(i), governing Bureau decisions to permit disclosure of information. The Bureau did not conform itself to Rule 0.459 when it failed to give oral notice to U S WEST counsel. In contrast to Rule 0.459, Rule 0.461(i) allows ten working days in which to respond to the Bureau's decision. U S WEST is filing this response within five working days so as to comply with the Bureau's instruction and not to jeopardize its opportunity to apply for review of the Bureau's decision. However, U S WEST hereby reserves any and all additional rights it may have under Rule 0.461(i).

the Commission, or the Bureau on remand, determines that the confidential information is subject to disclosure, U S WEST asks that the Bureau return the confidential information to U S WEST, rather than disclose it.

BACKGROUND

This controversy arises out of a Commission audit. The Common Carrier Bureau's auditors performed audits of U S WEST and other Regional Bell Operating Companies ("RBOCs") to determine whether their records were being maintained according to the Commission's rules. In the audit reports, the auditors claimed to be unable to locate certain central office equipment. The reports were not entirely based on observation, but also relied on statistical sampling. *See Ameritech Corp. Tel. Operating Cos. ' Continuing Property Records Audit*, Notice of Inquiry, FCC 99-69, CC Docket No. 99-117, 1999 WL 190421, at 2 (rel. April 7, 1999) ("*NOI*").

The Bureau provided U S WEST and the other audited RBOCs with drafts of their respective audit reports for comment. U S WEST and others disagreed with the auditors' conclusions regarding unaccounted-for central office equipment. U S WEST provided written narrative responses to the Bureau's draft reports. In addition, U S WEST submitted three volumes of supplemental data regarding specific instances where equipment was reported not found. Although U S WEST waived confidentiality with respect to the narrative responses, it did not waive its right to confidential treatment for the three volumes of data.

To address publicly some of the issues surrounding these audits, the Commission issued a Notice of Inquiry asking for comment on several issues, including "[t]he validity and

reasonableness of the methodology used by the Bureau's auditors in determining whether to rescore or to modify a finding during a field audit that equipment was 'not found.'" *NOI*, at 3. MCI WorldCom Inc., ostensibly wishing to submit comments on this particular issue, filed a Freedom of Information Act ("FOIA") Request. *See* Letter from Mary L. Brown, MCI, to Andrew S. Fishel, Managing Director, Federal Communications Commission (June 22, 1999) ("FOIA Request"). This FOIA Request sought information submitted by U S WEST and other RBOCs in the course of the audit. Specifically, MCI asked for information that U S WEST had submitted in response to the Bureau's request for explanations regarding equipment that was reported as "not found." *Id.* at 1. In addition, MCI requested "audit workpapers" made by Bureau staff during the audit that address the reporting of items in the audit sample. *Id.* at 2 (describing material requested). (The material MCI requested will be referred to collectively as "the confidential information.")

U S WEST opposed MCI's FOIA Request with respect to the raw data that U S WEST provided the Bureau and the Bureau's audit workpapers that reflect that raw data. *See* Letter from James T. Hannon, U S WEST, to Andrew S. Fishel, Managing Director, Federal Communications Commission (July 12, 1999). The Bureau decided on July 27, 1999, to disclose the confidential information to MCI and unspecified other parties pursuant to a protective order. *See* Letter from Lisa M. Zaina, Acting Deputy Chief, Common Carrier Bureau, to Mary L. Brown, MCI (July 27, 1999) (the "Bureau Decision"). This application seeks review and reversal of the Bureau Decision.

ARGUMENT

I. THE BUREAU'S DECISION TO RELEASE THE CONFIDENTIAL INFORMATION VIOLATES APPLICABLE LAW.

The Bureau's decision to disclose commercially sensitive audit information provided by U S WEST (and other RBOCs) represents a radical departure from past Commission precedent and an upsetting of U S WEST's expectation that this information would be kept in strict confidence. The decision is inconsistent with applicable law — including the federal Trade Secrets Act, the Communications Act, the Freedom of Information Act, and the Commission's own regulations governing disclosure of audit information. The decision merits Commission review — and reversal — because it represents a serious violation of multiple laws, because it would cause unwarranted injury to U S WEST and others, and because it would have far-reaching negative ramifications for the Commission's ability to gain the voluntary cooperation of parties in future audit proceedings.

A. Disclosure of the Confidential Information Would Violate the Trade Secrets Act.

The Trade Secrets Act prohibits government employees from disclosing any commercial information obtained during the course of “any examination or investigation” or other government business unless such disclosure is “authorized by law.” 18 U.S.C. § 1905. The scope of the information protected by the Trade Secrets Act is expansive, and has been interpreted to be at least coextensive with Exemption 4 of the FOIA, which encompasses “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4) (“Exemption 4”); *see CNA Fin. Corp. v. Donovan*, 830 F.2d

1132, 1151 (D.C. Cir. 1987). The Bureau correctly concedes that the confidential information likely falls within the scope of Exemption 4, and therefore the Trade Secrets Act. *See* Bureau Decision, at 3. Therefore, the information *must* be withheld unless its disclosure is “authorized by law.” 18 U.S.C. § 1905.^{2/}

The Bureau appears to rely on two statutes, 47 U.S.C § 220(f) and § 154(j), as its exclusive bases for claiming that the disclosure ordered here is “authorized by law” within the meaning of the Trade Secrets Act. *See* Bureau Decision, at 3. In fact, an examination of the plain language of both these statutes reveals that neither authorizes disclosure of records such as these.

Section 220(f), far from authorizing disclosure of information, *forbids* releasing documents obtained during audit: “No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts . . . except insofar as he may be directed by the

^{2/} The Department of Justice’s manual on the FOIA spells out the interaction between the Trade Secrets Act and FOIA Exemption 4:

The practical effect of the Trade Secrets Act is to limit an agency’s ability to make a discretionary release of otherwise-exempt material, because to do so in violation of the Trade Secrets Act would not only be a criminal offense, it would also constitute “a serious abuse of agency discretion” redressable through a reverse FOIA suit. Thus, in the absence of a statute or properly promulgated regulation giving the agency authority to release the information — which would remove the disclosure prohibition of the Trade Secrets Act — a determination by an agency that material falls within Exemption 4 is “tantamount” to a decision that it cannot be released.

U.S. Department of Justice, Office of Information and Privacy, Freedom of Information Act Guide & Privacy Act Overview 207-08 (1998) (footnotes omitted).

Commission.” 47 U.S.C. § 220(f). Congress obviously enacted this provision out of a realization that information such as that at issue here is so sensitive — and its disclosure to third persons potentially so injurious — that nondisclosure must be the norm. The exception referenced in the final clause of Section 220(f) does not affirmatively authorize disclosure, but rather merely recognizes that disclosure might be permissible in some limited circumstances where *some other* legal authority — that is, some authority *other than* Section 220(f) — supplies a basis for decision. While the Commission has stated previously that Section 220(f) grants it the necessary authority to disclose materials protected by the Trade Secrets Act, *see Amendment of Part 0 of the Commission’s Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau*, Memorandum Opinion and Order, 104 F.C.C.2d 733, at ¶ 7 (1986), we respectfully submit that this interpretation is contrary to the plain reading of the section.

Likewise, Section 4(j) of the Communications Act does not supply the necessary authority to release documents protected by the Trade Secrets Act. *See* 47 U.S.C. § 154(j). To the extent Section 4(j) addresses the treatment of confidential records, it authorizes the Commission to “*withhold* publication of records or proceedings containing secret information affecting the national defense.” 47 U.S.C. § 154(j) (emphasis added). This can hardly be construed as authority to *disclose* records. Moreover, Section 4(j) is a procedural housekeeping statute, not a statute enacted to override the substantive protections of the Trade Secrets Act. As such, it cannot provide the Commission with authority to disclose protected trade secrets. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 301-02 (1979).

We also note that the Commission may not rely on its Rules 0.457, 0.459, and 0.461 as a basis for overriding the Trade Secrets Act. The Bureau neither cited these rules nor

engaged in the deliberate process they mandate (*see infra* at 8-9) as a basis for disclosure. Moreover, there is a substantial issue whether these rules, even if they had been properly invoked and applied by the Bureau, could lawfully supply a basis for overriding the Trade Secrets Act. *See Chrysler*, 441 U.S. at 301-02; *but see Northern Television, Inc. v. FCC*, 1 Gov't Disclosure Serv. (P-H) ¶ 80,124 (No. 79-3468) (D.D.C. Apr. 18, 1980).

B. The Bureau's Decision Also Violates 47 C.F.R. § 0.457.

The Bureau's Decision to release the confidential information also violated the protections afforded by the Commission's own confidentiality rules. The Bureau failed to analyze the material under Rule 0.457. Had it done so, as required before ordering any disclosure, it would have found that the material should not be disclosed.

1. The Bureau failed to analyze the confidential material pursuant to Rule 0.457.

When U S WEST voluntarily submitted the confidential information to the Bureau, it did so reasonably relying on the Commission's own determinations about confidentiality of raw audit data. The Commission's rules grant confidential treatment to "[i]nformation submitted in connection with audits, investigations and examinations of records pursuant to 47 U.S.C. 220." 47 C.F.R. § 0.457(d)(1)(iii). The Commission recently decided to grant confidential treatment to audit materials without the need for the submitter to request confidentiality because, in the Commission's words, "disclosure could result in competitive injury to those who provide such information to the Commission," and the Commission wishes to "encourag[e] carriers to comply in good faith with Commission requests for information."

Confidentiality R&O, at ¶ 54. Because these materials are presumed entitled to confidential treatment, the same rule requires the Commission, when faced with a FOIA request for such materials, to “weigh the policy considerations favoring non-disclosure against the reasons cited [in the FOIA request] for permitting inspection in light of the facts of the particular case.” 47 C.F.R. § 0.457.

In this case, the Bureau did no such weighing. Indeed, the Bureau mistakenly concluded that it “need not reach the merits of the Exemption 4 arguments.” Bureau Decision, at 3. Instead of following the Commission’s rules and conducting a Rule 0.457 analysis — and without even considering the policy considerations favoring nondisclosure — the Bureau simply advanced a conclusory and unsupported determination that release was “appropriate.” *See* Bureau Decision, at 4. The Bureau’s failure to perform the required analysis ignored the Commission’s carefully-considered decision to grant special protection to audit materials, as reflected in Rule 0.457(d)(1)(iii).

2. A proper analysis under Rule 0.457 compels the conclusion that the confidential information should not be released.

The Commission has traditionally withheld audit materials from the public pursuant to a “longstanding policy of respecting the confidentiality of information obtained from carriers in the course of audits.” *Bell Tel. Operating Cos.*, Memorandum Opinion and Order, 10 FCC Rcd 11541, at ¶ 4 (1995). This policy emanates from two statutes. First, it mirrors Congress’s determination that material collected during audits should not be divulged. *See* 47 U.S.C. § 220(f). Second, the Commission’s policy reflects the FOIA, which allows agencies not to release “trade secrets and commercial or financial information obtained from a person and

privileged or confidential.” 5 U.S.C. § 552(b)(4). Because U S WEST does not normally disclose the information at issue to the public, and because U S WEST submitted this information to the Commission *voluntarily*, it must be considered “confidential” and within Section 552(b)(4).^{3/} See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (en banc); see also 47 C.F.R. § 457(d)(1)(iii).

Moreover, as U S WEST explained to the Bureau, release of this confidential information would cause competitive injury. The confidential information contains detailed pricing data on specific items used in providing telecommunications services, the disclosure of which could jeopardize U S WEST’s ability to negotiate these prices from its vendors in the future. In addition, U S WEST’s competitors might use this data unfairly to select certain U S WEST central offices as better candidates for competition, because of the age or quality of the equipment in those offices.

Keeping the information confidential will enhance the Commission’s ability to conduct audits in the future. As the Commission has pointed out, its policy of keeping audit information confidential “enhance[s] the efficiency and integrity of our audit process by encouraging carriers to comply in good faith with Commission requests for information.”

Confidentiality R&O, at ¶ 54. RBOCs and other companies subject to audit will be much more

^{3/} Even if U S WEST had not submitted this information voluntarily, it would still come within Exemption 4 by virtue of 47 C.F.R. § 0.457(d)(1)(iii) and the two-part test of *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). *National Parks* holds that information fits within Exemption 4 “if disclosure of the information is likely to have *either* of the following effects: (1) to impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Id.* (emphasis added) (footnote omitted). As we explain below, *both* parts of this test are satisfied.

forthcoming during the audit process if they are assured that competitively-sensitive information will not be released. In the past, U S WEST has always cooperated in the Commission's audit proceedings based on the understanding that information provided for the audit would be treated confidentially.

Releasing the confidential information would be a drastic change from Commission precedent. While the Commission occasionally releases summaries of audit data, or releases audit reports, "the Commission withholds from public disclosure raw financial data obtained from carriers during audits as well as audit workpapers compiled by Commission staff." *GTE Tel. Operating Cos.*, Memorandum Opinion and Order, 9 FCC Rcd 2588, at ¶ 4 (1994); *see also J. David Stoner*, Memorandum Opinion and Order, 5 FCC Rcd 6458, at ¶ 2 (1990) (withholding raw data gathered during audit); *Martha H. Platt*, Memorandum Opinion and Order, 5 FCC Rcd 5742, at ¶ 6 (1990) (same); *Scott J. Rafferty*, Memorandum Opinion and Order, 5 FCC Rcd 4138, at ¶ 3 (1990); *Western Union Tel. Co.*, Memorandum Opinion and Order, 2 FCC Rcd 4485, at ¶ 12 (1987) (same). Such a change in Commission policy would be unwise for the reasons described above.^{4/}

^{4/} All of the foregoing arguments apply with full force to the portions of the requested audit workpapers that contain or reflect information that the Bureau obtained or received from U S WEST. The Commission should withhold the audit workpapers in their entirety for an additional reason: they represent the Bureau's deliberational materials. As such, the Commission may withhold them from disclosure under 5 U.S.C. § 552(b)(5). *See National Wildlife Federation v. United States Forest Service*, 861 F.2d 1114, 1118-19 (9th Cir. 1988). The Bureau recognized as much in its decision: "Workpapers prepared by Commission staff auditors are historically withheld from disclosure as a private and clearly deliberative part of the audit process." Bureau Decision, at 4. Ignoring its own counsel, the Bureau erred in deciding to release the workpapers.

Under settled Commission policy, to overcome all the foregoing “policy considerations favoring non-disclosure” that the Bureau failed to consider, *see* 47 C.F.R. § 0.457, there would need to be a compelling interest favoring disclosure. In particular, to override the presumption of confidentiality, there must be more than “‘the mere chance that [the information] might be helpful, but [rather] a showing that the information is a necessary link in a chain of evidence’ that will resolve an issue before the Commission.” *Confidentiality R&O*, at ¶ 8 (citations omitted). In the present case, there are *no* well-founded reasons to permit MCI and unspecified others to have access to this sensitive confidential information, much less any *compelling* reasons. Access to the information is not needed for commenting on the NOI. The NOI asks for comment on the “methodology” used to do scoring of certain equipment, not the *application* of that methodology to the underlying facts. *See NOI*, at 3; *see also* Public Notice, *Accounting Safeguards Division Releases Information Concerning Audit Procedures for Considering Requests by the Regional Bell Operating Cos. To Reclassify or “Rescore” Field Audit Findings of the Continuing Property Records*, DA 99-668 (rel. Apr. 7, 1999) (discussing methodology used to score items of equipment). Commenting on the methodology used requires no particular facts, certainly not the facts U S WEST and the other RBOCs submitted in confidence. In these circumstances, there is no valid basis for overcoming the presumption of confidentiality embodied in the Commission’s rules.

II. THE BUREAU UNLAWFULLY DETERMINED TO RELEASE THE CONFIDENTIAL INFORMATION PURSUANT TO A PROTECTIVE ORDER.

The Bureau determined to release the confidential information to MCI and unspecified other “parties” pursuant to a protective order. *See* Bureau Decision, at 2. This determination was itself erroneous. The federal Trade Secrets Act flatly prohibits disclosures made “in any manner or to any extent not authorized by law” and plainly contains no exception for disclosures made pursuant to a protective order. 18 U.S.C. § 1905. And even the Commission’s own policy provides that protective orders “will only be used when it is appropriate to grant limited access to information that the Commission determines should not be routinely available for public inspection pursuant to Sections 0.457(d) or 0.459(a).” *Confidentiality R&O*, at ¶ 22. The Bureau *did not reach* the question whether the confidential information should or should not be available under Rules 0.457(d) and 0.459(a). Therefore, its determination to release the confidential information pursuant to a protective order was unlawful for this reason as well.

In any event, the Bureau’s unspoken and unexplained assumption that a protective order would obviate the harms that disclosure would threaten is itself unfounded. The Bureau mentioned in its decision that the use of the protective order “satisfies the compelling interest of providing *parties* access to the information in issue,” and the proposed protective order is crafted to allow access to an unlimited number of “parties” who self-declare some interest in the underlying proceeding. *See* Bureau Decision, at 2 (emphasis added). It is therefore reasonable to assume that many other parties in addition to MCI (including many direct competitors of U S

WEST) would be entitled to have the same access to the confidential information that MCI would receive. MCI suggested as much to the Bureau in its FOIA Request. *See* FOIA Request, at 4. Allowing such broad-scale access to information pursuant to a protective order would not provide adequate protection from the harms associated with disclosure.^{5/}

The Bureau's position that the confidential information should be disclosed pursuant to a protective order is also contrary to the FOIA, the statute on which MCI's request was premised. The FOIA requires agencies to disclose agency records "to any person." 5 U.S.C. § 552(a)(3)(A). The statute leaves an agency only two options — either to withhold information or to disclose it. It countenances no middle ground in which information may be disclosed to some persons but not others based on whether the objectives of the requester are good or bad, or in which information may be disclosed in some limited way under a protective order. *See Baldridge v. Shapiro*, 445 U.S. 345, 350 n.4 (1982) (noting that the FOIA does not contain a procedure for disclosing information pursuant to a promise of secrecy); *Durns v. Bureau of Prisons*, 804 F.2d 701, 706 (D.C. Cir. 1986), *vacated on other grounds*, 486 U.S. 1029 (1988) ("Congress granted the scholar and the scoundrel equal rights of access to agency records."). In this respect as well, the Bureau's decision is unlawful.^{6/}

^{5/} In the event the Commission declines to reverse the decision of the Bureau to release the materials at all, U S WEST requests, in the alternative, that the Commission order the Bureau to craft a more restrictive protective order that will better protect U S WEST's need to keep the confidential information from parties who could use it for competitive purposes. In particular, any protective order should include provisions limiting access to the confidential information to persons who have no decision-making authority or influence with respect to competitive issues.

^{6/} If the Commission determines, notwithstanding all of the foregoing arguments, that the confidential materials are subject to disclosure as the Bureau has decided, then U S
(continued...)

CONCLUSION

For the foregoing reasons, the Commission should vacate the Bureau Decision and order that the confidential information not be released, pursuant to a protective order or otherwise.

Respectfully submitted,



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August 3, 1999


^{6/}

(...continued)

WEST requests, in the alternative, that its three volumes of confidential data be returned to U S WEST rather than disclosed. Returning the materials without disclosure would provide an alternative means for protecting significant confidentiality interests. The Commission's rules allow submitters to have their documents returned to them upon request. *See* 47 C.F.R. § 0.459(e). The Bureau has taken the position that Rule 0.459 controls this proceeding. *See* Bureau Decision, at 5. In addition, because the Bureau did not treat this matter as one under the FOIA, the documents should be returned despite the provision that documents will not be returned once a FOIA request is made. *See* 47 C.F.R. § 0.459(e). In any event, the documents are arguably not the property of the Commission, *see id.* § 0.457, and therefore are not subject to the no-return provision of Rule 0.459(e).

CERTIFICATE OF SERVICE

I, Julie A. Veach, do hereby certify that on this 3rd day of August, 1999, I have caused the foregoing Application for Review and Review of Freedom of Information Action to be served via hand delivery or third party commercial carrier, upon the persons listed on the attached service list.



Julie A. Veach

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